



COMMONWEALTH OF KENTUCKY  
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**OAG 17-027**

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*Subject:* Whether using churches as voting places creates excessive entanglement with religion.

*Requested by:* Stephanie Schlueter  
Madison County Deputy Clerk

*Written by:* Matt James

*Syllabus:* The use of churches as voting places does not create an excessive entanglement with religion.

*Statutes construed:* KRS 117.065

***Opinion of the Attorney General***

Stephanie Schlueter, Madison County Deputy Clerk, has requested an opinion of this office as to whether churches may be used as voting places. We advise that the use of churches as voting places does not create an excessive entanglement with religion.

KRS 117.065(1) provides that "the county board of elections shall . . . establish the voting place for each precinct." KRS 117.065(2) provides that the county board of elections may use "buildings constructed in whole or in part with tax revenues" as polling places without cost. KRS 117.065(3) provides that "the county board of elections shall designate as voting places only those places which are accessible to all eligible voters, including those with physical limitations and the elderly." KRS 117.065(4) requires that each polling place must have immediate access to a telephone within the polling place. KRS 117.065 does not place any other restrictions on which places may be designated as polling places.

KY. CONST. § 5 provides that "no preference shall ever be given by law to any religious sect, society or denomination; . . . nor shall any person be compelled to attend any place of worship." U.S. CONST. amend. I provides that "Congress shall make no law respecting an establishment of religion." "Not all entanglements, of course, have the effect of advancing or inhibiting religion. Interaction between church and state is inevitable . . . , and we have always tolerated some level of involvement between the two. Entanglement must be 'excessive' before it runs afoul of the Establishment Clause." *Agostini v. Felton*, 521 U.S. 203, 233 (1997). "In determining whether there is excessive entanglement, we consider "the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority.'" *Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs*, 788 F.3d 580, 593 (6th Cir. 2015).

Courts that have considered the question have concluded that the use of churches as voting places does not constitute an excessive entanglement with religion. "By voting in a church building plaintiff is not required to attest to the nature of his religious beliefs, and that the burden of free exercise of religious beliefs 'is so slight that it does not begin to outweigh the interest of the state in having available to it the additional polling places which the use of the churches affords.'" *Otero v. State Election Bd. of Okla.*, 975 F.2d 738, 741 (10th Cir. 1992) (quoting *Berman v. Bd. of Elections, City of New York*, 420 F.2d 684, 686 (2d Cir. 1969)). Accordingly, we advise that churches may be used as voting places without creating an excessive entanglement with religion.

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Matt James  
Assistant Attorney General